

No. 9(1)82-6Lab-8229.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workmen and the management of M/S.

BEFORE SHRI BANWARI LAL DALAL, PRESIDING OFFICER, LABOUR COURT, HARYANA, ROHTAK

References No. 243, 249, 340 and 344 all of 1978

Between

SHRI KAPOOR SINGH AND RAJ KUMAR, WORKMEN AND THE MANAGEMENT OF THE SUB DIVISIONAL OFFICER, JHAJJAR SUB DIVISION, WEST JAMUNA CANAL, JHAJJAR AND SHRI SUKHBIR SINGH AND KANAHYA LAL WORKMEN AND THE MANAGEMENT OF THE EXECUTIVE ENGINEER, WEST JAMUNA CANAL, ROHTAK.

Present. Shri Rajinder Singh Dahiya for the workmen.

Shri Harish Chander for the management.

AWARD

These references have been referred to this court by the Hon'ble Governor,—vide his orders No. ID/RTK/32-N-78 39001, dated 28th August, 1978, ID/RTK/33-N-78/55631, dated 14th December, 1978 of Shri Kapoor Singh and Raj Kumar against the management of S.D.O., Jhajjar Sub Division, West Jamuna Canal, Jhajjar and ID/RK/49-N-78/47555, dated 20th October, 1978, ID/RK/48-N-78/55658, dated 14th December, 1978 of Shri Sukhbir Singh and Kanahaya Lal against the management of Executive Engineer, West Jamuna Canal, Rohtak for adjudication of the disputes under section 10 (i) C of the I.D. Act. The term of the references was:—

"Whether the termination of services of the workman was justified and in order? If not, to what relief is he entitled?"

By this award I dispose of references No. 243, 249, 340 and 344 all of 1978 which are between the workmen of the same managements and which were consolidated by order dated 8th August, 1979 with orders that the evidence was to be recorded in file No. 243 of 78 which was to be read in all these references. On the receipt of the order of references notices as usual were sent to the parties. The parties put in their appearances, filed their respective pleadings and the similar issues were framed as under in all the references:—

1. Whether the respondent is covered within definition of the industry as given in section 2 (J) of the I.D. Act?
2. Whether the applicant was employed on temporary job on workcharged basis and services was dispensed with due to abandonment of the work?
3. Whether the applicant is estopped from raising the dispute?
4. As per reference?

Issue No. 1. was tried first and was decided in favour of the workman and against the management by my order dated 3rd September, 1980 which shall also be read as part of my award.

The management examined Shri S.K. Munjal, S.D.O. West Jamuna Canal Jhajjar as their witness and closed their case. The workmen examined Shri Kapoor Singh and Kanahaya Lal as their witnesses and closed their case. I heard the arguments on behalf of the workmen and the management has failed to address any arguments inspite of several opportunities provided to them. I decide the issues as under.

Issue No. 2. MW-1 deposed that all the four workmen were working on the Patuwas system. Patuwas system was a non perennial system which runs only during the rainy season. Ex. MW-1/1 was the order of the A.C.E. Canal declaring the J.L.N. as non perennial. The services of the workmen were terminated,—vide notices Ex. MW-1/2-A, MW-1/2-B, MW-1/2-C and MW-1/2-D on the closure of work. He has further stated that he had brought the original roll where in Kapoor Singh has been shown working with 1 number Generating Set 92 K.W. JLN Mechanical Division in the month of July, 1975. In the month of August, 75 he worked on the working 9 number Electric concrete and he was being adjusted in future also. In the same manner the other employees were also adjusted. The employees were again called when the work started in the next season,—vide Exhibits MW-1/4-A, MW-1/4-B, MW-1/4-C and MW-1/4-D. In response to these notices Shri Sukhbir Singh and Kanahaya Lal joined the service as fresh appointees and both of them were reappointed vide Ex. MW-1/5-A and Ex. MW-1/5-B. He has further stated that Patuwas system is a branch of the JLN system and which runs for about 3 to 4 months in the rainy season and new recruitment was made every year at the start of the season. He has

further stated that the service record of Shri Raj Kumar was not with him as the service book was with Shri Raj Kumar who did not return. He admitted as correct that Shri Raj Kumar had joined Patuwas system on transfer from JLN Mech. Division Rohtak. Kapoor Singh and Raj Kumar declined to join service as fresh appointees,—vide their letters Ex. MW-1/6-A and MW-1/6-B. On coming the work to a close the management issued instructions for terminating the services of the staff except the chowkidars. In his cross examination the witness gave out that Kapoor Singh joined the service in the Irrigation Department on 1st November, 1973 at J.L.N. Mech. Division, Rohtak and he was transferred to them in July, 76. It was admitted as correct that Kapoor Singh was not appointed for Patuwas system. He admitted that Ex. W-1 was issued by the S.O. Shri H.C. Arora whose signature he recognised. It was also admitted as correct that both of these workmen were not served with one month notice or were paid notice pay. No retrenchment compensation was paid to them. He also admitted as correct that no seniority list was displayed. He could not tell as to the other employees working on other parts of the JLN system were also retrenched or not. He has further stated that as far as his knowledge was concerned the work on J.L.N. Mech. Division continued for all the 12 months in a year.

The workmen have also deposed that they were posted as Operators and T. Mate helpers and there work was of the permanent nature which continued for all the 12 months. No notice, notice pay or retrenchment compensation was paid to them at the time of their termination. Shri Kapoor Singh admitted in his cross examination that his place of work went on changing but the work remained the same. At the time of his transfer he was working at Patuwas system. He admitted as correct that he was given the offer to join service but when he went the resume his duty he was not allowed to do so. He admitted that he wrote letter Ex. MW-1/6-A.

From the statement of MW-1 it is clear that the workmen had been working with the J.L.N. Mech. Division Rohtak from the year 1973. They were transferred to Patuwas system under W.J.C. Sub Division Jhajjar in the month of July, 1976. He has given out in his cross examination that work on J.L.N. Mech. Division continued for all the 12 months of the year. The workmen were appointed to work in the J.L.N. Mech. Division and the management witness had stated that they were not appointed for the Patuwas system. It is therefore clear that the workmen were appointed for a permanent job and not for a temporary job as the work on J.L.N. Mech. Division lasted the whole of the year. On this count the workmen can also not be termed as work charge employee as they were employed on a permanent job and it is also not justified and cannot be agreed that their services could be terminated on the completion of work. The issue is accordingly decided against the management.

Issue No. 3.—It is a well settled rule of law based on various decisions of the Supreme Court and High Courts that the workman could agitate his demand of reinstatement even when he accepted an offer of reappointment and it cannot be deemed that the workman had waived his rights to reinstatement to his original post. The same has been held in the case of Northern Frontier Railway and Sachindar Nath Sain reported in 1969 II LLJ page 708. I accordingly hold that the workmen are not estopped from raising the present disputes. The issue is accordingly decided against the management.

Issue No. 4.—It is also an admitted fact that the management has not paid any retrenchment compensation to the workmen and the order of termination amounted to retrenchment. Condition precedent to retrenchment required under section 25 F (b) has not been complied with. No seniority list was displayed. The termination is arbitrary and unjustified as well as not in order and is void *ob initio*. The workmen Shri Kapoor Singh and Raj Kumar are entitled to reinstatement with continuity of service and with full back wages while the workmen Shri Kanahya Lal and Shri Sukhbir Singh who had accepted the reemployment are entitled to reinstatement with continuity of service but without back wages as they had not given any evidence as to upto which time they remained out of employment. The references are answered and returned accordingly.

Dated the 31st July, 1982

BANWARI LAL DALAL,

Presiding Officer,
Labour Court, Haryana, Rohtak.

Endst. No. 1843, dated 3rd August, 1982.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour & Employment Departments Chandigarh as required under section 15 of the I.D. Act.

BANWARI LAL DALAL,

Presiding Officer,
Labour Court, Haryana, Rohtak